

## REMARKS

The present application includes pending claims 1-28, all of which have been rejected. Reconsideration of the claim rejections is requested.

Claims 1-28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over United States Patent No. 6,417,446 ("Whitehead") in view of United States Patent No. 5,259,053 ("Schaffer"). The Applicants respectfully traverse this rejection, at least for the reasons set forth below, and previously during prosecution.

The Examiner previously acknowledges that Whitehead fails to disclose "two additional separately simplex power receptacles having a respective housing." See November 2, 2004 Office Action. As set forth previously during prosecution, the Applicants respectfully submit that Whitehead does not teach, nor suggest, simplex power receptacles, as recited in the claims of the present application. The current Office Action attempts to use Schaffer to overcome this deficiency.

### **I. The Combination Of Whitehead And Schaffer Does Not Render Claim 1-28 Unpatentable**

The pending claims of the present application specifically recite "simplex **power** receptacles" or "simplex **electrical** receptacles." The Applicants respectfully submit, however, that Schaffer does not teach, nor suggest, power or electrical receptacles: Instead, Schaffer discloses only fiber optic receptacles.

#### **A. Schaffer Does Not Teach, Nor Suggest, A Simplex Power Receptacle**

For example, Schaffer discloses a "discrete fiber optic receptacle assembly." See Schaffer at Abstract. Additionally, Schaffer states the following:

The present invention relates to fiber optics and, in particular, to a discrete receptacle assembly comprised of parts which may be assembled to house one or more active optical devices and to align the optical device(s) with a mating optical plug.

Schaffer at column 1, lines 6-10. Notably, Schaffer discloses a receptacle for fiber optics, but not a power or electrical receptacle. Schaffer focuses exclusively on fiber optic receptacles:

Conventional receptacles may be simplex receptacles which house a single active device for interconnection and alignment of a single optical fiber, or they may be duplex receptacles which house dual active devices for interconnection and alignment of a duplex optical fiber.

*Id.* at column 1, lines 36-41.

Schaffer further discusses the need for an improved fiber optic receptacle:

Hence, there is an immediate commercial need for a fiber optic receptacle which can accommodate variations in the size of the active optical devices or shielding thereof while maintaining a precise alignment of the active optical device within the receptacle throughout the assembly process.

*Id.* at column 1, lines 63-68. As such, Schaffer discloses an improved fiber optic receptacle for optical devices.

It is, therefore, an object of the present invention to provide a discrete fiber optic receptacle assembly formed of interlocking parts to accommodate variations in the size of

the active optical devices, and to accept shielding of the devices.

It is another object of the present invention to provide a fiber optic receptacle assembly in which an active optical device is inserted in a shield, and the shield is then urged into alignment between two resistance-fit interlocked sections of a discrete receptacle housing.

\* \* \*

In accordance with the above-described objects, the present invention provides an optical receptacle assembly for seating and aligning a conventional active optical device of a type having a concave alignment face.

*Id.* at column 2, lines 3-24. Schaffer discloses an optical receptacle assembly for use with active optical devices. Schaffer does not teach, nor suggest, however, a “simplex power” or “electrical receptacle,” as recited in the claims of the present application. Further, as discussed previously during prosecution, Whitehead also does not teach, nor suggest, a “simplex power” or “electrical receptacle.” As such, the combination of Whitehead and Schaffer also does not teach or suggest this limitation. The Applicants therefore respectfully submit that the combination of Whitehead and Schaffer does not render claims 1-28 unpatentable, at least for this reason.

**B. The Claims Of The Present Do Not Merely Duplicate Essential Working Parts**

The claims of the present application do not “merely duplicate the essential working parts” of the embodiments shown in Whitehead or Schaffer, as suggested in the Office Action. As discussed above, Whitehead only discloses duplex or quad power

receptacles, but not simplex power receptacles. Further, Schaffer does not teach, nor suggest, power receptacles. Duplicating the duplex or quad receptacles shown in Whitehead still would not produce the inventions recited in the claims of the present application, because there still would not be any simplex power receptacles. Again, the Applicants respectfully submit that the combination of Whitehead and Schaffer does not teach, nor suggest, "simplex power receptacles," and therefore cannot render the claims of the present application unpatentable.

Additionally, with respect to claim 6, neither Whitehead or Shaffer disclose or suggest a poke-through fitting that includes both four simplex power receptacles and four data jacks. Nor would it be obvious to so modify these references given the space constraints imposed on poke through fittings. Specifically, as noted in Whitehead, building codes typically restrict such fittings to a maximum diameter of four inches.

Inasmuch as floor structure 14 is typically a structural, load bearing member of the building, the maximum size of the interfloor is limited by building code requirements. In particular, interfloor holes, typically range in diameter from two to four inches. In one preferred embodiment, hole 12 is formed with a four inch diameter.

Whitehead at col. 4, line 65 to col. 5, line 3. Hence, claim 6 and its dependent claims are believed to be patentable over Whitehead.

Claims 11 and 13 are similarly patentable over Whitehead and Schaffer for the reasons given above in connection with independent claims 1 and 6. Namely, neither Whitehead or Shaffer disclose or suggest a poke-through wiring fitting having "four

separately formed simplex power receptacles, each power receptacle having a respective housing mounted within the fitting." Nor, as discussed above, would it be obvious to construct the duplex receptacles 98, 99 of Whitehead as four simplex power receptacles. Further, as discussed in connection with claim 6, Whitehead does not contemplate, disclose or suggest a poke-through fitting having both four simplex power receptacles and four communication/data jacks mounted within the fitting. Hence, claims 11 and 13 are patentable over Whitehead and Schaffer.

Claim 14 is patentable over Whitehead and Schaffer at least for the reasons given above in connection with claim 1. Namely, these references do not disclose or suggest a poke-through wiring fitting having "four simplex power receptacles, each power receptacle having a respective housing." Nor, as discussed above, would it be obvious to construct the duplex receptacles 98, 99 of Whitehead as simplex power receptacles. Hence, claim 14 is patentable over Whitehead.

Likewise, claim 16 is patentable over Whitehead because Whitehead does not disclose or suggest a poke-through wiring fitting having four simplex power receptacles, each of which has a respective housing. Nor, as discussed above, would it be obvious to construct the duplex receptacles 98, 99 of Whitehead as four simplex power receptacles. Further, as discussed in connection with claim 6, Whitehead does not contemplate, disclose or suggest a poke-through fitting having both four simplex power receptacles and four communication/data jacks mounted within the fitting. Hence, claims 16 is patentable over Whitehead and Schaffer.

Method claims 21-22 and 24-28 are also patentable over Whitehead and Schaffer for the reasons given above. Specifically, these references do not disclose or suggest mounting four simplex power receptacles within the insert (or fitting), wherein each simplex power receptacle has a respective housing. Nor, as discussed above, would it be obvious to construct the duplex receptacles 98, 99 of Whitehead as four simplex power receptacles. Hence claims 21-22 and 24-28 are patentable over Whitehead and Schaffer.

## **II. Traversal Of Perceived Assertion Of Official Notice**

The Office Action states the following:

It is well known in the electrical art to use a simplex power receptacle having a separate housing as evidence by Schaffer.

February 9, 2005 Office Action at, for example, pages 3 and 5. As discussed above, Schaffer focuses exclusively on fiber optic receptacles, but does not teach, nor suggest, power or electrical receptacles.

The above statement in the Office Action (coupled with the fact that Schaffer clearly does not teach, nor suggest, power/electrical receptacles) leads the Applicants to believe that the Examiner is asserting Official Notice of the subject of the statement. If the Examiner is asserting Official Notice that the subject of the statement is common knowledge, the Applicants respectfully traverse the Examiner's assertion as further set forth below. Alternatively, if the Examiner's assertion is based on the personal knowledge of the Examiner, then under MPEP § 2144.03(C) and 37 C.F.R. §

1.104(d)(2), the Examiner's assertion must be supported by an affidavit from the Examiner.

According to MPEP § 2144.03(A), Official Notice, without supporting references, should only be asserted when the subjects asserted to be common knowledge are "capable of instant and unquestionable demonstration as being well-known." That is, the subjects asserted must be of "notorious character" under MPEP § 2144.03(A).

The Applicants, however, respectfully submit that the subject matter of the Examiner's perceived assertion of Official Notice is not well-known in the art as evidenced by the searched and cited prior art. The Applicants respectfully submit that the Examiner has performed "a thorough search of the prior art," as part of the Examiner's obligation in examining the present application under MPEP § 904.02.

Additionally, the Applicants respectfully submit that the Examiner's searched and cited references found during the Examiner's thorough and detailed search of the prior art are indicative of the knowledge commonly held in the art. However, in the Examiner's thorough and detailed search of the relevant prior art, none of the prior art taught or suggested the subject matter of the Examiner's perceived assertion of Official Notice. That is, the Examiner's thorough and detailed search of the prior art has failed to yield any mention of the teachings that the Examiner is asserting as widely known in the art. The Applicants respectfully submit that if the subject matter of the Examiner's perceived assertion of Official Notice had been of "notorious character" and "capable of instant and unquestionable demonstration as being well-known" under MPEP §

2144.03(A), then the subject matter would have appeared to the Examiner during the Examiner's thorough and detailed search of the prior art.

If the Examiner had found any teaching of relevant subject matter, the Examiner would have been obligated to list the references teaching the relevant subject matter and make a rejection. Consequently, the Applicants respectfully submit that the prior art does not teach the subject matter of the Examiner's perceived assertion of Official Notice and respectfully traverses the Examiner's perceived assertion of Official Notice.

The Applicants specifically challenge the Examiner's perceived assertion of Official Notice with regard to the following:

"It is well known in the electrical art to use a simplex power receptacle having a separate housing."

As stated above, the Applicants respectfully traverse the Examiner's perceived assertion of Official Notice and submit that the subject matter is not of such "notorious character" that it is "capable of instant and unquestionable demonstration as being well-known." Under MPEP 2144.03, the Examiner is now obligated to provide a reference(s) in support of the assertion of Official Notice if the Examiner intends to maintain any rejection based on the assertion of Official Notice. Additionally, the Applicants respectfully request the Examiner reconsider the assertion of Official Notice and provide to the Applicants any basis for the Examiner's assertion of Official Notice. If the Examiner has any questions, the Examiner is invited and encouraged to contact the Applicants at the number below for further discussion.

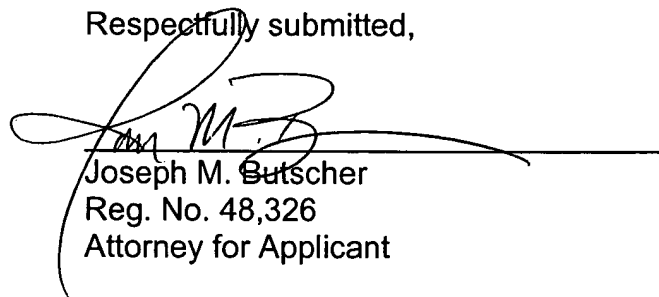


### III. Conclusion

In view of the above, claims 1 to 28 are believed to be in condition for allowance. The Examiner is invited to telephone the Applicants' undersigned attorney at (312) 775-8000 if any unresolved matters remain. Please charge any fees due in connection with this submission to Deposit Account No. 13-0017.

Respectfully submitted,

Date: March 18, 2005



Joseph M. Butscher  
Reg. No. 48,326  
Attorney for Applicant

McAndrews, Held & Malloy, Ltd.  
500 West Madison Street, 34<sup>th</sup> Floor  
Chicago, Illinois 60661  
Telephone: (312) 775-8000  
Facsimile: (312) 775-8100